

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 ALLSTATE INDEMNITY  
11 COMPANY,

Plaintiff,

12 v.

13 RANDY LINDQUIST, et al.,

14 Defendants.  
15

CASE NO. C20-1508JLR

ORDER DENYING PLAINTIFF'S  
MOTION FOR  
RECONSIDERATION

16 **I. INTRODUCTION**

17 Before the court is Plaintiff Allstate Indemnity Company's ("Allstate") motion for  
18 reconsideration of the court's January 31, 2022 order (1/31/222 Order (Dkt. # 128)).  
19 (Reconsideration Mot. (Dkt. # 129).) Having considered the motion, the relevant  
20 portions of the record, and the applicable law, the court DENIES Allstate's motion.<sup>1</sup> The

21  
22 <sup>1</sup> Allstate does not request oral argument (Reconsideration Mot. at 1), and the court  
concludes that oral argument would not be helpful to its disposition of this motion, *see* Local  
Rules W.D. Wash. LCR 7(b)(4).

1 court additionally corrects a clerical error in its January 31, 2022 order *sua sponte*  
2 pursuant to Federal Rule of Civil Procedure 60(a). *See infra* at 7.

## 3 II. ANALYSIS

4 Allstate asks the court to reconsider its January 31, 2022 order compelling Allstate  
5 to produce certain claim file notations to Defendant Randy Lindquist, which Allstate  
6 contends erroneously concluded “that Allstate’s litigation analysis and strategy related to  
7 evaluation and damages after the filing of the instant declaratory relief action[] is not  
8 privileged or protected, and is in fact discoverable.” (Reconsideration Mot. at 2.)  
9 Allstate additionally requests, in the alternative, that the court certify an interlocutory  
10 appeal of its January 31, 2022 order so that Allstate may seek review of the court’s  
11 discovery rulings before the Ninth Circuit. (*Id.* at 4.) The court first considers Allstate’s  
12 motion for reconsideration before turning to address its request for certification of an  
13 interlocutory appeal.

### 14 A. Allstate’s Motion for Reconsideration

15 Motions for reconsideration are disfavored, and the court will ordinarily deny such  
16 motions unless the moving party shows (a) manifest error in the prior ruling, or (b) new  
17 facts or legal authority which could not have been brought to the attention of the court  
18 earlier and through reasonable diligence. Local Rules W.D. Wash. LCR 7(h)(1).

19 Allstate presents no new facts or legal authority in its reconsideration motion that  
20 could not have been brought to the court’s attention earlier with reasonable diligence.  
21 (*See generally* Reconsideration Mot.) Indeed, Allstate asks the court to reconsider its  
22 prior ruling based on the same arguments it has advanced throughout this discovery

1 dispute including, primarily, its overarching contention “that the commencement of the  
2 filing of the declaratory complaint on 10/13/20[] constitutes the privileged date, and that  
3 anything created thereafter was prepared in anticipation of litigation.” (*Id.* at 3.) The  
4 court has previously rejected that argument. (*See* 11/1/21 Order (Dkt. # 107) at 7-10;  
5 8/16/21 Order (Dkt. # 73) at 11.)

6 Allstate’s assertion that the court’s January 31, 2022 order “is directly contrary” to  
7 *Schreib v. American Family Mutual Insurance Company* also provides no basis for  
8 reconsideration. (*See* Reconsideration Mot. at 2 (citing *Schreib v. Am. Fam. Mut. Ins.*  
9 *Co.*, 304 F.R.D. 282, 286 (W.D. Wash. 2014)).) In *Schreib*, the court concluded that loss  
10 reserve documents created after the insurer had received an Insurance Fair Conduct Act  
11 (“IFCA”) notice from the insured “reflect[ed] evaluations of the potentially impending  
12 litigation,” and therefore did not need to be produced in discovery. *See Schreib*, 304  
13 F.R.D. at 286. It did so, however, only after the insurer demonstrated that the documents  
14 “included a ‘calculation of risk predicated upon the claim being placed into suit.’”  
15 *Schreib*, 304 F.R.D. at 286 (expressly stating that the insurer’s receipt of the IFCA notice  
16 “does not end the inquiry” because loss reserves are also prepared in the ordinary course  
17 of business).

18 Allstate has never made a comparable attempt to, for example, distinguish  
19 investigative efforts it undertook to support its litigation from those it had to take as part  
20 of its coverage assessment. (*See, e.g.*, Resp. (Dkt. # 97) at 9 (relying on broad assertions  
21 that all documents created after the lawsuit was filed are not “in the same or similar  
22 form” as they would be if litigation had not commenced); *see also* Reconsideration Mot.

1 at 4.) To the contrary, and notwithstanding Allstate’s boilerplate assertions of protection,  
 2 the court found after reviewing the claim file notations *in camera* that the  
 3 investigation-related entries likely would have “been created in substantially similar  
 4 form” in the absence of litigation and are, therefore, not protected work product. *See*  
 5 *Gamble v. State Farm Mutual Auto. Ins. Co.*, No. C19-5956RJB, 2020 WL 4193217, at  
 6 \*3 (W.D. Wash. July 20, 2020); (1/31/22 Order at 3).

7 If Allstate believes there are important subtleties in the claim file notations that the  
 8 court has failed to appreciate, it has missed its opportunity to explain their significance.  
 9 From its privilege log to its current motion, Allstate has consistently relied on a broad  
 10 claim of absolute protection based on the date it filed its complaint.<sup>2</sup> (*See* 11/1/21 Order  
 11 at 12; *see also* O’Neill Decl. (Dkt. # 98) ¶ 6, Ex. D at 14 (explaining in its privilege log  
 12 that Allstate 000591-634 were withheld as “[c]laims materials dated post the filing of the  
 13 instant lawsuit”); Reconsideration Mot. at 2.) It has done so despite the court’s warning  
 14 that “when the documents were created is not necessarily the operative question to  
 15 determine whether they are protected.” (8/16/21 Order at 11.) The result is that the court  
 16 has been left largely to its own devices to discern the significance, or lack thereof, of each  
 17 claim file notation. (*See* 1/31/22 Order at 4 (lamenting that Allstate “declined to offer  
 18 any document-specific context or arguments that might have informed the court’s *in*  
 19 *camera* review”).)

20 //

---

21 <sup>2</sup> Previously, Allstate urged the court to accept the date Mr. Lindquist retained counsel as  
 22 the date its claim file notations became absolutely protected from discovery. (*See* 8/16/21 Order  
 at 11.)

1        Additionally, the court is unpersuaded by Allstate’s assertion that the January 31,  
2 2022 order will allow Mr. Lindquist to continue supplementing his discovery requests  
3 “up through trial.” (Reconsideration Mot. at 2.) The January 31, 2022 order is narrow  
4 and applies solely to the disputed claim file entries submitted for the court’s *in camera*  
5 review. (*See* 1/31/22 Order at 1, 6-7.) It does nothing to disturb the scheduling order in  
6 this matter, which requires discovery to be completed by April 18, 2022. (*See* Sched.  
7 Order (Dkt. # 30).) The court expects the parties to comply with that deadline, which—  
8 absent good cause—will not be extended. *See* Local Rules W.D. Wash. 16(b). “Mere  
9 failure to complete discovery within the time allowed [will] not constitute good cause for  
10 an extension or continuance.” *Id.*

11        Accordingly, Allstate’s motion for reconsideration is DENIED.

12 **B.     Certification for Interlocutory Appeal**

13        In the alternative, Allstate asks the court to certify an interlocutory appeal of the  
14 January 31, 2022 order. (Reconsideration Mot. at 4.) Under 28 U.S.C. § 1292(b), a  
15 district court may certify for appeal “an order not otherwise appealable” in a civil action  
16 where it finds “that such order involves a controlling question of law as to which there is  
17 substantial ground for difference of opinion and that an immediate appeal from the order  
18 may materially advance the ultimate termination of the litigation.” 28 U.S.C. § 1292(b).  
19 Interlocutory appeals are to be certified “only in exceptional situations” where  
20 certification will help “avoid protracted and expensive litigation.” *In re Cement Antitrust*  
21 *Litig.* (MDL No. 296), 673 F.2d 1020, 1026 (9th Cir. 1982); *Trident Seafoods Corp. v.*

22 //

1 *Commonwealth Ins. Co.*, No. C10-0214RAJ, 2012 WL 13028551, at \*2 (W.D. Wash.  
2 Mar. 23, 2012).

3 Allstate does not identify the discrete question of law it wishes to appeal but rather  
4 seeks review of the court’s application of well-established discovery standards to the  
5 documents it reviewed *in camera*. (See Reconsideration Mot. at 4; *see also id.* at 1  
6 (characterizing the court’s holding).) Regardless of whether the court’s January 31, 2022  
7 order “could materially affect the outcome of litigation,” *In re Cement Antitrust Litig.*,  
8 673 F.2d at 1026, that order represents “an application of law to a particular set of facts”  
9 and thus does not qualify for interlocutory appeal under 28 U.S.C. § 1292(b), which  
10 requires “a pure question of law,” *Bluetooth SIG, Inc. v. FCA US LLC*, No. C18-  
11 1493RAJ, 2021 WL 1922975, at \*1 (W.D. Wash. May 13, 2021); *Drummond Co., Inc. v.*  
12 *Conrad & Scherer, LLP*, 885 F.3d 1324, 1336 (11th Cir. 2018); *Ahrenholz v. Bd. of*  
13 *Trustees of Univ. of Ill.*, 219 F.3d 674, 677 (7th Cir. 2000). Moreover, certifying an  
14 appeal of that issue would likely increase—not avoid—the extent and expense of this  
15 litigation. *See In re Cement Antitrust Litig.*, 673 F.2d at 1026.

16 Accordingly, Allstate’s request for certification of an interlocutory appeal under  
17 28 U.S.C. § 1292(b) is DENIED.

### 18 **III. CONCLUSION**

19 For the reasons given above, the court DENIES Allstate’s motion for  
20 reconsideration and DENIES its request for certification of an interlocutory appeal (Dkt.  
21 # 129).

22 //

1        Additionally, the court corrects a clerical error in its January 31, 2022 order (Dkt.  
2 # 128) *sua sponte* pursuant to Federal Rule of Civil Procedure 60(a). On page 6, line 17  
3 the court indicated that Allstate should produce all entries dated 11/16/20. (1/31/22  
4 Order at 6.) This was a clerical error. In keeping with the court's reasoning in that order  
5 (*id.* at 5), the court intended to instruct Allstate to produce the 11/16/20 entries at 4:01pm,  
6 6:20pm, and 6:21pm on Allstate 000612-613. The court did not intend to instruct  
7 Allstate to produce the 11/16/20 entry at 3:53pm on Allstate 000612. The court will issue  
8 an amended order remedying this error.

9        Dated this 9th day of February, 2022.

10  
11        

12        JAMES L. ROBART  
13        United States District Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22